IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Lam, et al.

Confirmation No.: 1161

Application No.: 09/802,709

Group Art Unit: 1614

Filing Date: March 8, 2001

Examiner: Z. Fay

For: Methods And Devices For Providing Drug Therapy

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF SUNEEL K. GUPTA

1. I am one of the named inventors of the above-identified patent application, and make this declaration in support thereof.

2. I have been practicing in the field of drug delivery for at least the last 16 years. I received my Ph.D. degree in Pharmacokinetics from the University of Manchester in Manchester, United Kingdom in 1987, and served a post-doctoral fellowship in Pharmacokinetics and Pharmacodynamics at the University of California, San Francisco from 1987 to 1989. I joined Alza Corporation in 1989 as a Staff Scientist in the Biopharmaceutics department, and have held various positions with Alza since then. I currently hold the position of Senior Vice President & Distinguished Research Fellow.

3. I have evaluated methylphenidate plasma concentration data that are provided for the Ritalin SR product in Hubbard, *et al., Journal of Pharmaceutical Sciences* **1989**, *78:11*, 944 ("the Hubbard reference"), particularly the data that the reference provides in

Figure 1 for "Patient Profile 2" and in Figure 2, to assess whether the reference discloses dosage forms that achieve a substantially ascending methylphenidate plasma drug concentration over the time periods recited in the claims of the above-identified patent application.

4. The graphs provided in Figures 1 and 2 plot methylphenidate plasma concentrations in log scale, such that the distance between the various data points is compressed along the y-axis. In each of these graphs, for example, the distance along the y-axis between points representing 1.0 g/ml and 10.0 g/ml, respectively, is the same as that between points representing 10.0 g/ml and 100.0 g/ml, respectively, even though the difference between 1.0 g/ml and 10.0 g/ml (*i.e.*, 9.0 g/ml) is ten time less than the difference between 10.0 g/ml and 100.0 g/ml (*i.e.*, 90.0 g/ml). When re-plotted on a non-logarithmic basis (by scanning the relevant graphs into a computer and analyzing the curves using the "Un-Scan-It gel, Version 5.1" computer program), the data that the Hubbard reference provides in Figure 1 for "Patient Profile 2" and in Figure 2 are as follows:

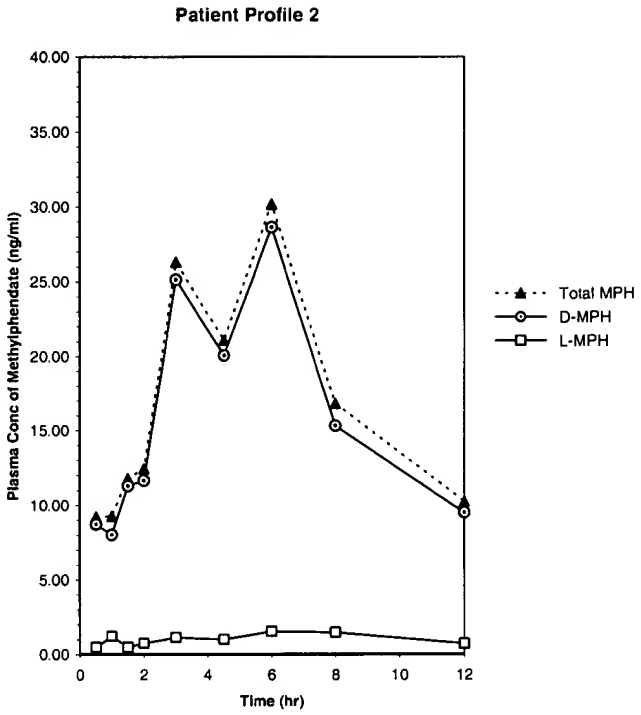
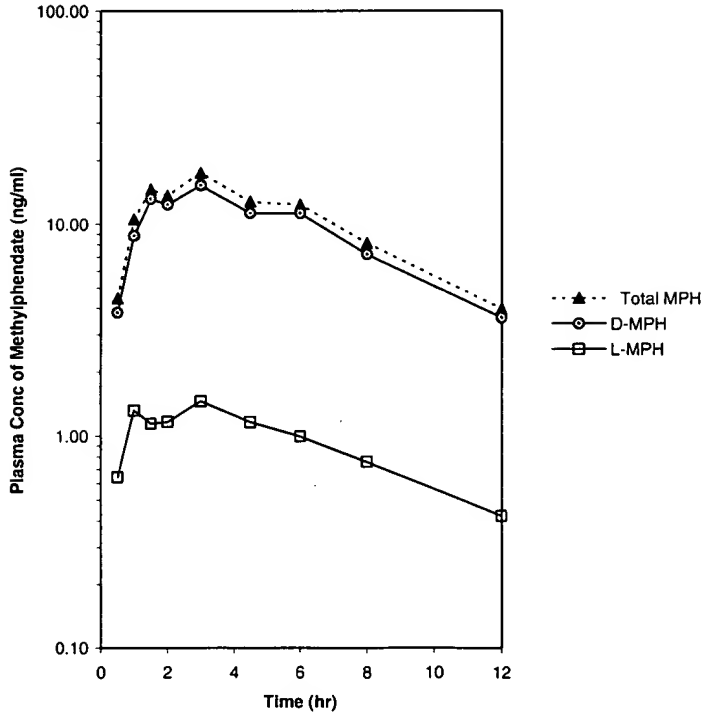

Patient Profile 2
Plasma Conc of Methylphendate (ng/ml)
40.00
35.00
30.00
25.00
20.00
15.00
10.00
5.00
0.00
0
2
4
6
8
10
12
Time (hr)
Total MPH
D-MPH
L-MPH

Figure 2


Plasma Conc of Methylphendate (ng/ml)
100.00
10.00
1.00
0.10
0
2
4
6
8
10
12
Time (hr)
Total MPH
D-MPH
L-MPH

5. I do not believe that anyone skilled in the field of drug delivery would consider these graphs to disclose "a substantially ascending methylphenidate plasma drug concentration over a time period of about 5.5 hours following ... administration" that I understand to be recited in the claims of the above-identified patent application.

6. I declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under § 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

July 21, 2004

Suneel K. Gupta